

## STATE CORPORATION COMMISSION

AT RICHMOND, FEBRUARY 11, 2021

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PETITION OF

OLD DOMINION ELECTRIC COOPERATIVE

CASE NO. PUR-2021-00026

For a declaratory judgment

ORDER FOR NOTICE AND COMMENT

On February 1, 2021, Old Dominion Electric Cooperative ("ODEC" or "Cooperative"), by counsel, filed with the State Corporation Commission ("Commission") a petition ("Petition") pursuant to Rule 100 C of the Commission's Rules of Practice and Procedure.<sup>1</sup> In its Petition, ODEC requests from the Commission a declaratory judgment as to whether the Cooperative is required to obtain certificates of public convenience and necessity ("Certificates") in connection with two projects for the deployment of battery energy storage systems ("BESS").<sup>2</sup>

Through its Petition, ODEC states that it plans to construct two BESS projects in Virginia: (i) an approximately five megawatt peak output BESS with two hours of storage (ten megawatt-hours) in BARC Electric Cooperative's ("BARC") service territory ("BESS-1"); and (ii) an approximately five megawatt peak output BESS with two hours of storage (ten megawatt-hours) in Prince George Electric Cooperative's ("PGEC") service territory ("BESS-2") (collectively, "BESS Projects").<sup>3</sup> The Cooperative further states that BESS-1 and BESS-2 will be located on land owned by BARC and PGEC, respectively, and both projects will be adjacent

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<sup>1</sup> 5 VAC 5-20-100 C.

<sup>2</sup> Petition at 1.

<sup>3</sup> *Id.* at 2.

to existing substations.<sup>4</sup> ODEC also represents that neither project will be paired with an existing generating facility.<sup>5</sup>

According to the Cooperative, the BESS Projects will not produce any emissions. ODEC asserts the BESS Projects have been planned and designed to enhance distribution system operations and reliability.<sup>6</sup> ODEC states that it anticipates that the BESS Projects will result in more efficient and reliable operation of the distribution systems for BARC and PGEC.<sup>7</sup> ODEC further states that by coordinating battery energy storage projects among its members, the Cooperative anticipates it will gain economies of scale.<sup>8</sup>

The Cooperative's Petition cites § 56-580 D of the Code of Virginia ("Code") and Code § 56-265.2, which is part of the Utility Facilities Act,<sup>9</sup> as the applicable statutory provisions in this case.<sup>10</sup> ODEC states that should its BESS Projects qualify as "electrical generating facilities" under Code § 56-580 D, the Cooperative believes that Certificates are not required for the BESS Projects as each project will have a peak output of five megawatts or less.<sup>11</sup> ODEC also states that it believes that Certificates are not required for the BESS Projects under the

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Code § 56-265.1 *et seq.*

<sup>10</sup> *See* Petition at 4-6.

<sup>11</sup> *Id.* at 4-5, 8; *see* Code § 56-576, -580 D.

Utility Facilities Act because the BESS Projects are "ordinary extensions or improvements in the usual course of business."<sup>12</sup>

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this matter should be docketed; that the Cooperative should provide public notice of the Petition and should serve this Order for Notice and Comment upon appropriate persons; that interested persons should have the opportunity to file comments on the Petition as set forth in this Order for Notice and Comment; that the Commission's Staff should have the opportunity to file a response to the Petition; and that the Cooperative should have the opportunity to reply to any such comments or response.

The Commission takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels.<sup>13</sup> The Commission has taken certain actions, and may take additional actions going forward, that could impact the procedures in this proceeding.<sup>14</sup>

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<sup>12</sup> Petition at 6, 8; *See* Code § 56-265.2.

<sup>13</sup> *See, e.g.*, Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Governor Ralph S. Northam. *See also* Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and Executive Order No. 55, Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam. These and subsequent Executive Orders related to COVID-19 may be found at: <https://www.governor.virginia.gov/executive-actions/>.

<sup>14</sup> *See, e.g.*, *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders*, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency*, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency Extension of Prior Orders*, Case Nos. CLK-2020-00004 and CLK-2020-00005, Doc. Con. Cen. No. 200520101, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service*

Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of pleadings, unless they contain confidential information, and require electronic service on parties to this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) This matter hereby is docketed and assigned Case No. PUR-2021-00026.

(2) All pleadings in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice").<sup>15</sup> Confidential and Extraordinarily Sensitive information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.<sup>16</sup>

(3) Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Commission's Rules of Practice, the Commission directs that service on parties and the Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and the Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent

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*among parties during COVID-19 emergency*, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

<sup>15</sup> 5 VAC 5-20-10 *et seq.*

<sup>16</sup> As noted in the Commission's Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the COVID-19 emergency.

practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or the Staff is impeded from preparing its case.

(4) An electronic copy of the Petition and the Commission's Order for Notice and Comment may be obtained by submitting a written request to counsel for the Cooperative, Garland S. Carr, Esquire, Williams Mullen, 200 South 10th Street, Suite 1600, Richmond, Virginia 23219, or [gcarr@williamsmullen.com](mailto:gcarr@williamsmullen.com). Interested persons also may download unofficial copies from the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

(5) On or before March 12, 2021, the Cooperative shall publish once as display advertising (not classified) the following notice in a newspaper or newspapers of general circulation in every county and municipality in which the BESS Projects would be constructed:

NOTICE TO THE PUBLIC OF A PETITION  
BY OLD DOMINION ELECTRIC COOPERATIVE  
FOR A DECLARATORY JUDGMENT  
CASE NO. PUR-2021-00026

On February 1, 2021, Old Dominion Electric Cooperative ("ODEC" or "Cooperative"), by counsel, filed with the State Corporation Commission ("Commission") a petition ("Petition") pursuant to Rule 100 C of the Commission's Rules of Practice and Procedure. In its Petition, ODEC requests from the Commission a declaratory judgment as to whether the Cooperative is required to obtain certificates of public convenience and necessity ("Certificates") in connection with two projects for the deployment of battery energy storage systems ("BESS").

Through its Petition, ODEC states that it plans to construct two BESS projects in Virginia: (i) an approximately five megawatt peak output BESS with two hours of storage (ten megawatt-hours) in BARC Electric Cooperative's ("BARC") service territory ("BESS-1"); and (ii) an approximately five megawatt peak output BESS with two hours of storage (ten megawatt-hours) in Prince George Electric Cooperative's ("PGEC") service territory ("BESS-2") (collectively, "BESS Projects"). The Cooperative further states that BESS-1 and BESS-2 will be located on land owned by BARC and PGEC, respectively, and both projects will be adjacent to existing

substations. ODEC also represents that neither project will be paired with an existing generating facility.

According to the Cooperative, the BESS Projects will not produce any emissions. ODEC asserts the BESS Projects have been planned and designed to enhance distribution system operations and reliability. ODEC states that it anticipates that the BESS Projects will result in more efficient and reliable operation of the distribution systems for BARC and PGEC. ODEC further states that by coordinating battery energy storage projects among its members, the Cooperative anticipates it will gain economies of scale.

The Cooperative's Petition cites § 56-580 D of the Code of Virginia ("Code") and Code § 56-265.2, which is part of the Utility Facilities Act, as the applicable statutory provisions in this case. ODEC states that should its BESS Projects qualify as "electrical generating facilities" under Code § 56-580 D, the Cooperative believes that Certificates are not required for the BESS Projects as each project will have a peak output of five megawatts or less. ODEC also states that it believes that Certificates are not required for the BESS Projects under the Utility Facilities Act because the BESS Projects are "ordinary extensions or improvements in the usual course of business."

The Commission entered an Order for Notice and Comment that, among other things, ordered the Cooperative to provide notice of the Petition and provided interested persons the opportunity to comment on the Petition.

The Commission has taken judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels. In accordance therewith, all pleadings, briefs, or other documents required to be served in this matter shall be submitted electronically to the extent authorized by 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice"). Confidential and Extraordinarily Sensitive information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.



Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Commission's Rules of Practice, the Commission has directed that service on parties and Staff in this matter shall be accomplished by electronic means. Please refer to the Commission's Order for Notice and Comment for further instructions concerning Confidential or Extraordinarily Sensitive Information.

An electronic copy of the Petition and the Commission's Order for Notice and Comment may be obtained by submitting a written request to counsel for the Cooperative, Garland S. Carr, Esquire, Williams Mullen, 200 South 10th Street, Suite 1600, Richmond, Virginia 23219, or [gcarr@williamsmullen.com](mailto:gcarr@williamsmullen.com). Interested persons also may download unofficial copies from the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

On or before April 23, 2021 any interested person may file comments on the Petition by following the instructions found on the Commission's website: [scc.virginia.gov/casecomments/Submit-Public-Comments](http://scc.virginia.gov/casecomments/Submit-Public-Comments). All comments shall refer to Case No. PUR-2021-00026.

Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified by the Commission's Order for Notice and Comment, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

The public version of the Petition, the Commission's Rules of Practice, and the Commission's Order for Notice and Comment may be viewed at the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

#### OLD DOMINION ELECTRIC COOPERATIVE

(6) On or before March 12, 2021, the Cooperative shall serve a copy of this Order for Notice and Comment on the following officials, to the extent the position exists, in each county city, and town in which the BESS Projects would be constructed: the chairman of the board of supervisors of each county; the mayor or manager (or equivalent official) of every city and town; and the county, city, or town attorney. Service shall be made electronically where possible; if

electronic service is not possible, service shall be made by either personal delivery or first class mail to the customary place of business or residence of the person served.

(7) On or before April 2, 2021, ODEC shall file proof of the service required by Ordering Paragraph (5) and (6) above, including the name, title, address and electronic mail address (if applicable) of each official served, with the Clerk of the Commission.

(8) On or before April 23, 2021, any interested person or entity may file comments on the Petition by following the instructions on the Commission's website:

[scc.virginia.gov/casecomments/Submit-Public-Comments](http://scc.virginia.gov/casecomments/Submit-Public-Comments). All comments shall refer to Case No. PUR-2021-00026.

(9) On or before April 23, 2021, the Commission's Staff may file a response to the Petition.

(10) On or before May 7, 2021, ODEC may file with the Clerk of the Commission a reply to any comments filed on the Cooperative's Petition by interested persons or to any response filed by the Commission's Staff.

(11) All documents filed with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

(12) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to: Garland S. Carr, Esquire, Williams Mullen, 200 South 10th Street, Suite 1600, Richmond, Virginia 23219, or [gcarr@williamsmullen.com](mailto:gcarr@williamsmullen.com); and C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424, [mbrowder@oag.state.va.us](mailto:mbrowder@oag.state.va.us).